

THE HONORABLE BARBARA JACOBS ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TATIANA WESTBROOK, an individual;
JAMES WESTBROOK, an individual; HALO
BEAUTY PARTNERS, LLC, a Nevada Limited
Liability Company,

Plaintiffs,

v.

KATIE JOY PAULSON, an individual;
WITHOUT A CRYSTAL BALL, LLC, a
Minnesota Limited Liability Company; and
DOES 1 through 100, inclusive,

Defendants.

NO. 2:20-cv-01606-BJR

**DECLARATION OF MICHAEL J.
SALTZ IN OPPOSITION TO MOTION
TO DISMISS**

**DECLARATION OF MICHAEL J.
SALTZ -1**
(2:20-CV-01606-BJR)

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Seattle, WA 98104

1 I, MICHAEL J. SALTZ, hereby state as follows:

2 1. I am an attorney admitted *pro hac vice* to appear before the U.S. District Court for
3 the Western District of Washington in the above-captioned matter, and am a partner of Jacobson,
4 Russell, Saltz, Nassim & De la Torre, LLP, counsel for Plaintiffs Tatiana Westbrook, James
5 Westbrook, and Halo Beauty Partners, LLC in this matter. I am over the age of eighteen and am
6 competent to testify to the facts stated herein.

7 2. I submit this declaration in support of Plaintiffs' Opposition to Defendants'
8 Motion to Dismiss. I did not previously submit this declaration along with Docket numbers 27-
9 29 [Plaintiffs' Opposition and Supporting Declarations ("Plaintiffs' Opposition")], as new facts
10 have recently come to light that Plaintiffs could not have reasonably discovered prior to the filing
11 of the Opposition.

12 3. Specifically, since the filing of Plaintiffs' Opposition, Defendants have disclosed
13 additional evidence confirming that: Contrary to the statements made in Defendant Katherine
14 Paulson's ("Defendant Paulson") declaration [Dkt. 19] filed in support of Defendants' Motion to
15 Dismiss [Dkt. 17], Defendants have knowledge that they derive income from residents of the
16 state of Washington. Such evidence confirms that said income is derived through Super Chats
17 and paid channel memberships, in which they have entered into contracts to provide in exchange
18 for a fee, exclusive content and services to people Defendants have reason to know are
19 Washington residents.

20 4. Because Defendants failed to disclose that they derive income from the
21 performance of their contractual obligations to provide exclusive content to known Washington
22 residents through paid memberships to their YouTube channels, this evidence of Defendants
23 deriving an income from known Washington residents did not present itself until a week after the
24 filing of Plaintiff's Opposition. What is more, said evidence was made more difficult to find, and
25 otherwise comprehend, due to the fact that there has been a concerted effort to obfuscate and/or
26 destroy such evidence.

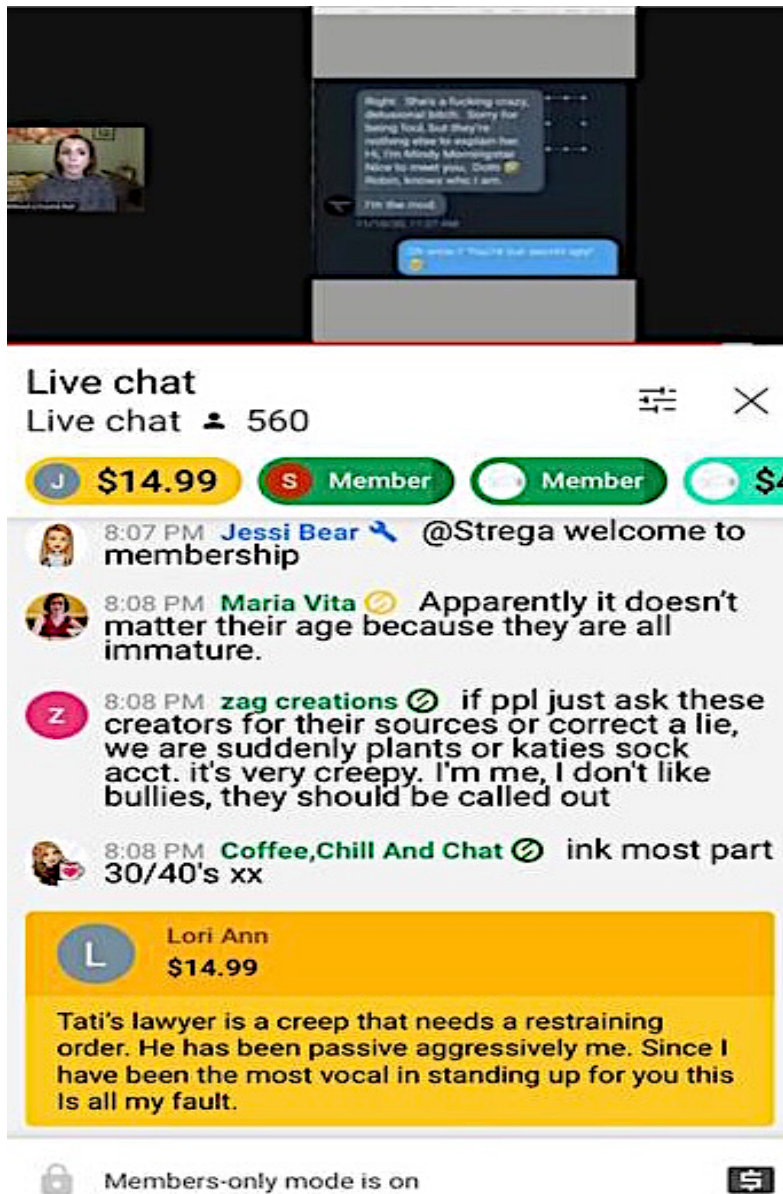
**DECLARATION OF MICHAEL J.
SALTZ -2**
(2:20-CV-01606-BJR)

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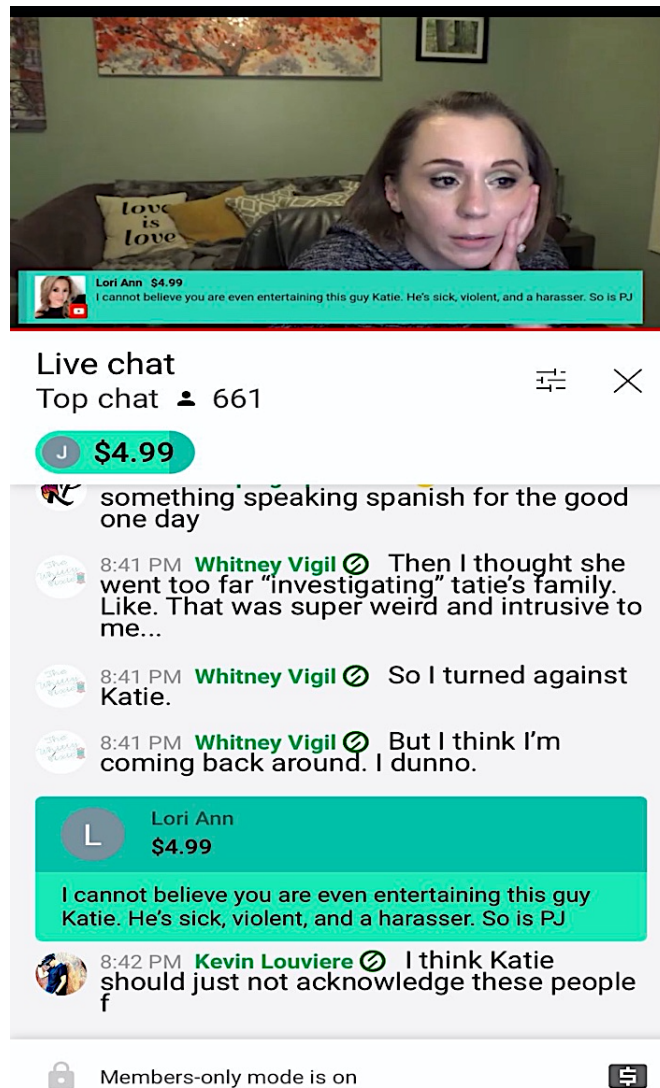
5. By way of example, and not limitation, I watched and simultaneously recorded a video entitled “All of this NEEDS to STOP” that was streamed live on December 29, 2020 on Defendants’ Katie Joy Live YouTube channel.¹ During the December 29, 2020 video, Defendants attempted to downplay their otherwise previously public connection to a member of their YouTube channel, Lori Ann Barnhart, who is now known to me to be a Washington resident. This member named “Lori Ann” is identified by her YouTube-assigned Author ID UC8fS63rCyrhhyfuJWFgoNA as her personal identifier on YouTube. Regardless of what published name she uses on YouTube, the Author ID remains the same. She is also the same person known as “Lori Ann” with the account names of @bloodtall, @lab05059 and @lab050505 on Twitter, and is the same person assigned Profile ID Number 100055592960041 on Facebook for an account that has used the names “Lori Ann Barnhart,” and more recently “Lori Ann Pirone.” This same “Lori Ann” is identified to be the person that is referenced in the declaration of Kim Fulmer, submitted by Plaintiffs in conjunction with their opposition. [Dkt. 29.]

6. During the “All of this NEEDS to STOP” video, a person using said Lori Ann YouTube account sent Defendants multiple “Super Chats” evidencing direct commerce between a Washington resident and Defendants. As stated in the Declaration of James Westbrook, a Super Chat is a payment of funds from a viewer to a YouTube channel during a live stream video that is paid through a live stream chat. [See Decl. J. Westbrook, ¶ 10, Dkt. 27-2]. Below is a true and correct copy of a screenshot of a Super Chat sent by said Lori Ann YouTube account to Defendants that I had obtained while watching said video at approximately 32 minutes therein.

¹ The Katie Joy Live YouTube channel is a subsidiary of the Without A Crystal Ball YouTube channel wherein Defendant Paulson now streams live content that is apparently of a more personal nature.

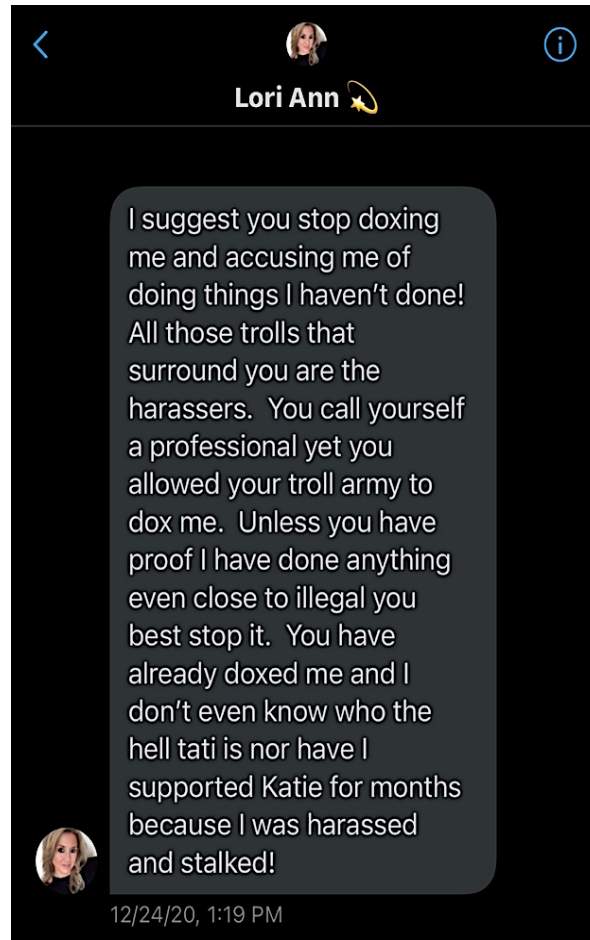


7. Additionally, below is a true and correct copy of a screenshot of another Super Chat sent from said Lori Ann YouTube account to Defendants that Defendants rebroadcasted in the video portion of the live stream that I had obtained while watching said video at approximately 72 minutes therein.



8. This development is significant because, as stated above, this person that I know as “Lori Ann” is also now known to me to be a resident of the state of Washington: a fact that has been presented in Plaintiffs’ Opposition, and which “Lori Ann” has effectively admitted herself in unsolicited messages sent from her Twitter account to me shortly after the filing of said Opposition papers. To be certain, said messages expressly stated that Plaintiffs, and especially

myself, “doxed”² her. By stating that she had been “doxed,” Lori Ann appears to have admitted that her personal identifying information is true, as one cannot be “doxed” with information that is not their own personal identifying information. Said messages were sent to me on December 24, 2020. A true and correct copy of a screenshot of said message I had obtained from my private Twitter direct messages is below:



I did not respond to said messages, nor have I sent her any direct messages, let alone any messages of a harassing or threatening nature.

9. Said super chat payments from said Lori Ann YouTube account to Defendants through Defendants’ YouTube channel establish that **Defendants do earn an income derived**

²“Doxed” means: to publicly identify or publish private information about (someone) especially as a form of punishment or revenge. See <https://www.merriam-webster.com/dictionary/dox>

1 **from the state of Washington.** A true and correct copy of said video without the live chat³ or
 2 Comments I had downloaded from Defendants' YouTube channel and placed into a Dropbox for
 3 the Court's convenience, and can be viewed at:
 4 [https://www.dropbox.com/s/a5dcssd8fte5e4v/2020.12.29%20All%20of%20this%20NEEDS%20](https://www.dropbox.com/s/a5dcssd8fte5e4v/2020.12.29%20All%20of%20this%20NEEDS%20to%20STOP%20%28KJ%20Live%29.mp4?dl=0)
 5 [to%20STOP%20%28KJ%20Live%29.mp4?dl=0](https://www.dropbox.com/s/a5dcssd8fte5e4v/2020.12.29%20All%20of%20this%20NEEDS%20to%20STOP%20%28KJ%20Live%29.mp4?dl=0)

6 10. Said Super Chat screenshots show at the bottom of each respectively that said live
 7 stream limited the participants of the ongoing live chat for said video to "**Members-only.**"
 8 Membership to a YouTube channel involves a monthly fee to a channel owner by an individual.⁴

9 11. Upon seeing that said livestream video chat was reserved exclusively for
 10 Defendants' paid members, I investigated the membership information published on Defendants'
 11 "Katie Joy Live" YouTube channel. I learned that Defendants charge recurring monthly
 12 membership fees for members on an increasing scale related to the level of "perks" (i.e.,
 13 contractual services and content to be provided by Defendants) for which a particular paying
 14 member wishes to contract with Defendants. Specifically, Defendants sell recurring monthly
 15 memberships to the Katie Joy Live YouTube Channel as follows: a "Stan"⁵ pays Defendants a
 16 \$1.99 recurring monthly fee; a "Vlogging Queen" pays Defendants a \$4.99 recurring monthly
 17 fee; a "KJ Ultimate Stan" pays Defendants a \$9.99 recurring monthly fee; and an "Ultimate
 18 Member" pays Defendants a \$24.99 recurring monthly fee.⁶ Below are true and correct copies of
 19 screenshots of Defendants' Katie Joy Live YouTube Channel's membership information I had
 20 obtained from said channel at <https://www.youtube.com/c/KatieJoyVlogs/community>, and
 21 wherein the services and content Defendants are offering to be contractually bound to provide
 22 said members are set forth:

23
 24 ³ Unfortunately, although YouTube allows users to download videos from its platform, said downloads do not
 include Live Chats or Comments.

25 ⁴ YouTube's published instructions regarding becoming a member to a YouTube channel, which is available at:
<https://support.google.com/youtube/answer/6304294?co=GENIE.Platform%3DDesktop&hl=en>

26 ⁵ A "Stan" is social media vernacular for a person who is both a "stalker" and "fan" of a particular personality.

⁶ It appears that a perk for "Ultimate Members" includes double portions of "Rough cuts and bloopers."

Katie Joy Live

Join this channel

Get access to membership perks

**Stan**

\$1.99/month

JOIN

Recurring payment. Cancel anytime. Creator may update perks from time to time.

- Loyalty badges next to your name in comments and live chat



- Photos and status updates
You will get status updates and photos
- Shout-outs in videos

[Less about perks](#)**Vlogging Queen**

\$4.99/month

JOIN

Recurring payment. Cancel anytime. Creator may update perks from time to time.

Includes access to perks from previous level(s)

From Stan

- Photos and status updates
You will get status updates and photos
- Shout-outs in videos

- Behind-the-scenes videos
- Access to members-only live chat

KJ Ultimate Stan

\$9.99/month

JOIN

Recurring payment. Cancel anytime. Creator may update perks from time to time.

Includes access to perks from previous level(s)

From Stan

- Photos and status updates
You will get status updates and photos
- Shout-outs in videos

From Vlogging Queen

- Behind-the-scenes videos
- Access to members-only live chat

- Exclusive members-only videos

Ultimate Member

\$24.99/month

JOIN

Recurring payment. Cancel anytime. Creator may update perks from time to time.

Includes access to perks from previous level(s)

From Stan

- Photos and status updates
You will get status updates and photos
- Shout-outs in videos

From Vlogging Queen

- Behind-the-scenes videos
- Access to members-only live chat

From KJ Ultimate Stan

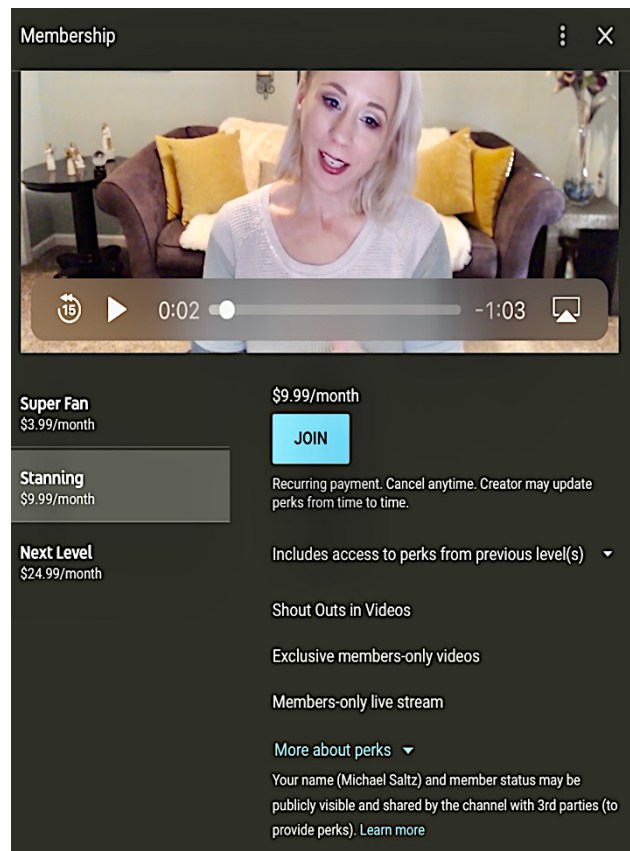
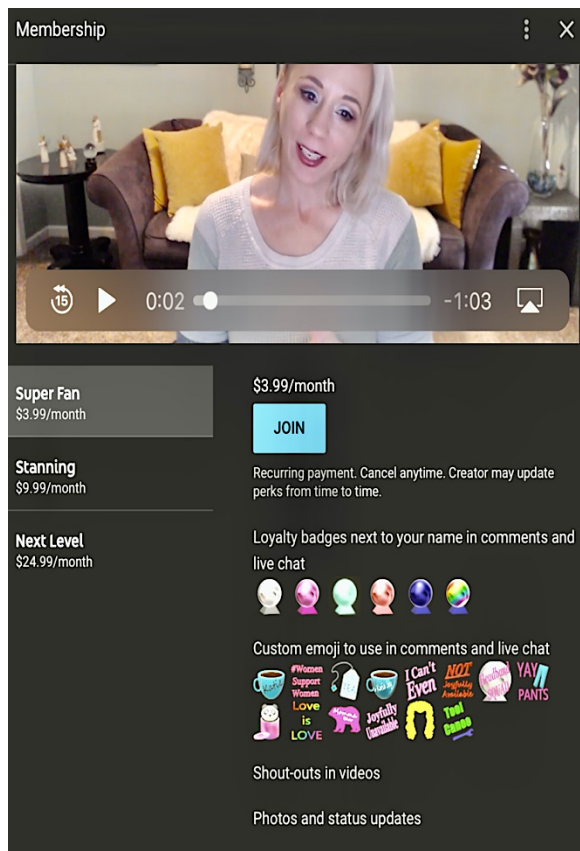
- Exclusive members-only videos

- Shout-outs in videos
- Rough cuts and bloopers
- Rough cuts and bloopers
- Members-only live stream

DECLARATION OF MICHAEL J. SALTZ -8
(2:20-CV-01606-BJR)

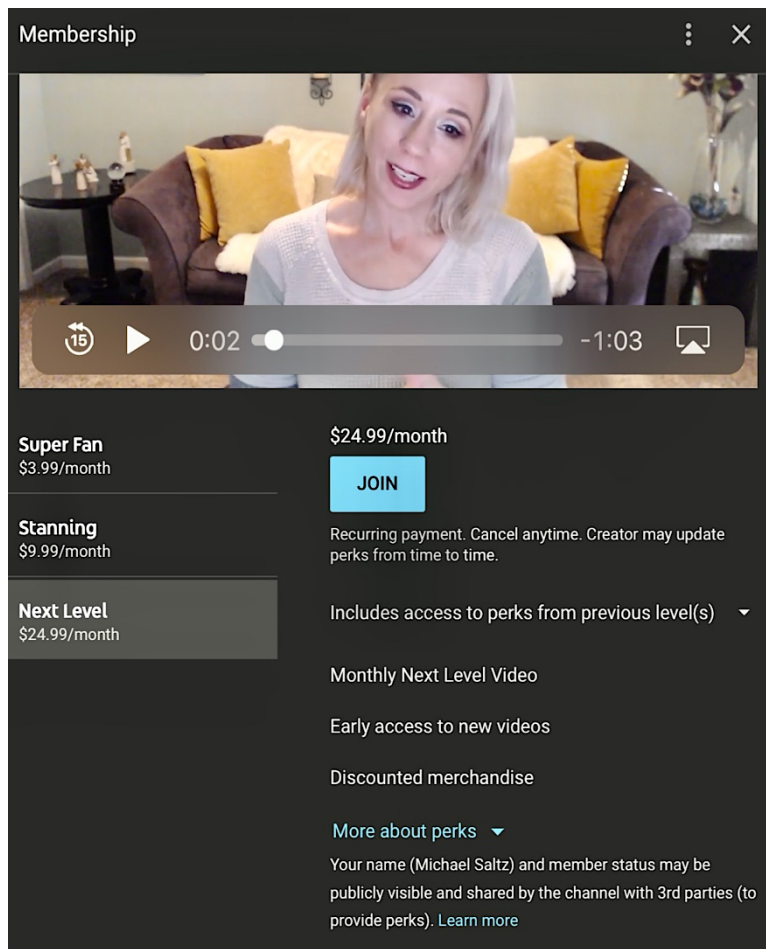
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12. I then also investigated the membership information published on Defendants' "Without A Crystal Ball" ("WOACB") YouTube channel. I learned that Defendants charge recurring monthly membership fees for members on an increasing scale related to the level of "perks" (i.e., contractual services and content to be provided by Defendants) for which a particular paying member wishes to contract with Defendants. Specifically, Defendants sell recurring monthly memberships to the WOACB YouTube channel as follows: a "Super Fan" pays Defendants a \$3.99 recurring monthly fee; a "Stanning" pays Defendants a \$9.99 recurring monthly fee; and a "Next Level" pays Defendants a \$24.99 recurring monthly fee. Below are true and correct copies of screenshots of Defendants' WOACB YouTube channel's membership information I had obtained from said channel at <https://www.youtube.com/c/WithoutACrystalBall/community>, and wherein the services and content Defendants are offering to be contractually bound to provide said members are set forth:



DECLARATION OF MICHAEL J. SALTZ -9
(2:20-CV-01606-BJR)

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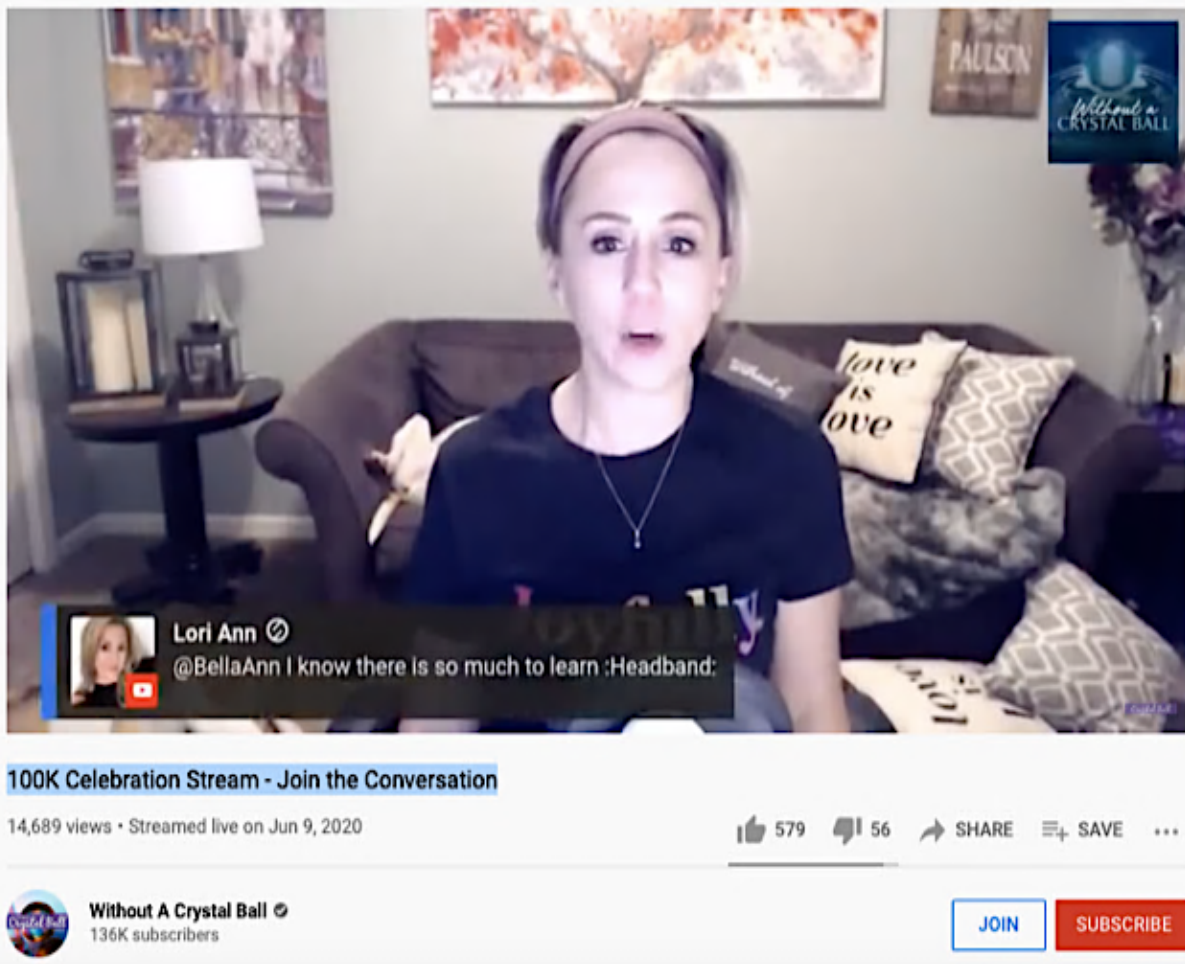
13. As explained by YouTube, there are six different loyalty badges that can be assigned to a paid member to a YouTube channel, and each one highlights how long a viewer has been a member of a particular channel. The color of the badge indicates how long each member has cumulatively paid for a membership. For example, if an active member joined a channel a year ago, but only paid for a total of 9 months out of the past 12 months, their badge will show that they have been a member for 9 months. The durations associated with each of the 6 badges shown above in the first membership screenshot are as follows: 1) New; 2) 1 month; 3) 2 months; 4) 6 months; 5) 1 year; and 6) 2 years. Information regarding YouTube channel membership badges can be found at: <https://support.google.com/youtube/answer/7544492?hl=en>

14. After I had determined through the evidence cited above that said Lori Ann YouTube account was a paid member of Defendants' YouTube channel, I then attempted to

determine if said Lori Ann YouTube account had been a paid member of Defendants' YouTube channels prior to the filing of this lawsuit on October 30, 2020. This required that my staff and I research and review the 65 videos remaining⁷ on Defendants' Katie Joy Live YouTube channel and approximately 1,540 videos remaining on Defendants' Without a Crystal Ball YouTube channel, with said videos ranging in length from approximately 1 hour to over 3 hours each.

15. In the performance of our investigation into tracking down any prior interactions between said Lori Ann YouTube account and Defendants' remaining videos, I found it odd that we could not readily find any. Rather, it had appeared to me that all of said interactions had been scrubbed from all of the visible live chats from said videos. However, on or about December 30, 2020, my attention was brought to a video on Defendants' WOACB YouTube channel entitled "100K Celebration Stream - Join the Conversation," which was uploaded to said channel on June 9, 2020. In watching said video, I personally witnessed, at approximately 35 minutes therein, a person I know to be Defendant Paulson display on her video screen a message from Lori Ann's YouTube account along with a picture of a person I have verified through Google's face recognition search feature to be Lori Ann Barnhart. I then heard Defendant Paulson simultaneously say: "Oh, this one. Lori. Don't ever get into it with Lori. Lori remembers your names. Lori is the catalog. Lori didn't like me at one point and now she is my best friend." A true and correct copy of a screenshot I had obtained from said video displaying Lori Ann's YouTube name and picture (which corresponds to the pictures of Lori Ann's Twitter @bloodtall account in the declaration of Kim Fulmer and Lori Ann's Facebook account) is below.

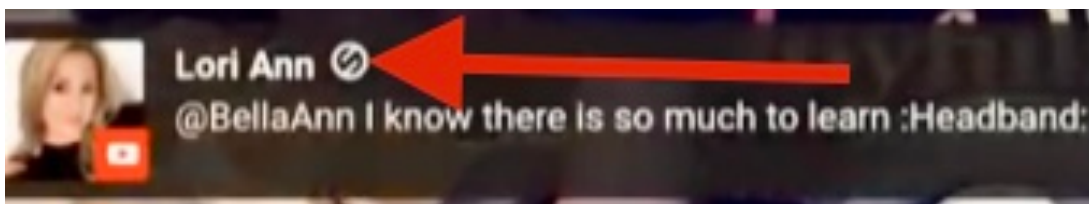
⁷ The reason why I describe the videos as those "remaining" on said channels is because Defendants appear to have deleted and/or privatized numerous videos on their YouTube channels since the filing of this lawsuit. See Declaration of Michael J. Saltz in Support of Plaintiffs' Motion to Preserve Evidence [Dkt. 9] and accompanying Exhibit "C" [Dkt. 9-3].



I had downloaded this YouTube video directly from YouTube without the live chat to a Dropbox for the Court's convenience, which is available for viewing at:

<https://www.dropbox.com/s/tgc1s7m65nw0njo/2020.06.09%20100K%20Celebration%20Stream%20-%20Join%20the%20Conversation.mp4?dl=0> .

Said screenshot verifies that the Lori Ann YouTube account name had a paid membership loyalty badge next to it that is only available to members of Defendants' YouTube channel that pays Defendants a recurring monthly fee.



DECLARATION OF MICHAEL J. SALTZ -12
(2:20-CV-01606-BJR)

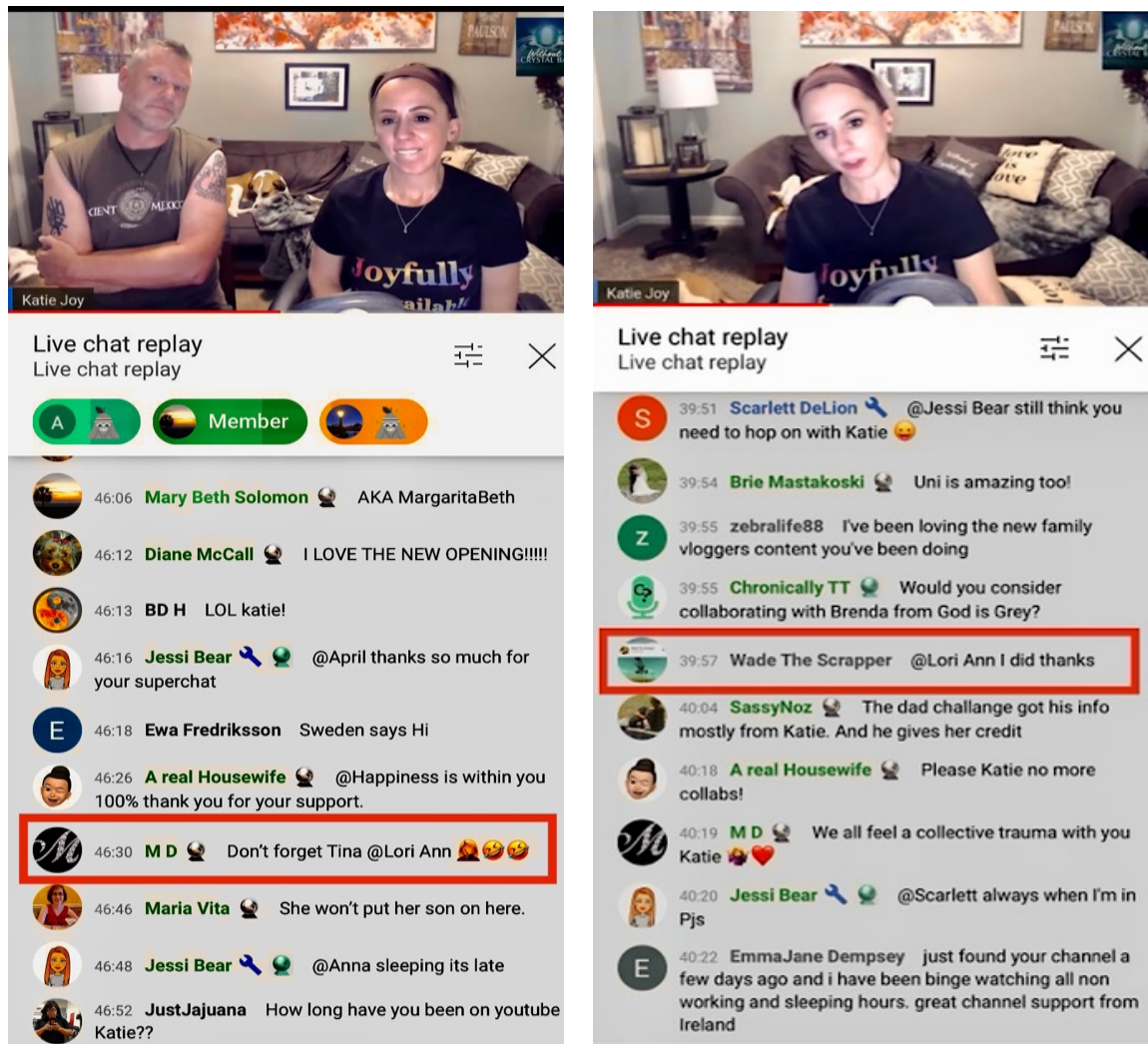
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1 Generally, the presence of that loyalty badge next to the name “Lori Ann” on said video screen
2 means Defendants have entered into a membership contract to provide “Lori Ann” said loyalty
3 badge, plus other exclusive content and services, in exchange for “Lori Ann” paying Defendants
4 a recurring monthly fee. As such, I had newly discovered this evidence indicating Defendants
5 were receiving an income pursuant to a contractual relationship they entered into with a resident
6 of the state of Washington, and who coincidentally Defendant Paulson publicly stated was her
7 “best friend.”

8 16. The reason this evidence was not discovered before the filing of Plaintiffs’
9 Opposition was that I did not have any knowledge that Lori Ann existed prior to the filing of this
10 lawsuit or her connection to Washington, and the videos that establish her membership had
11 innocuous titles unrelated to my clients. Defendants have so many YouTube videos, many of
12 which are more than an hour long, that it would take an outsider like me – who is naturally
13 unfamiliar with the contents of said videos – years to view and catalogue them all in their
14 entirety. The knowledge that Lori Ann is/was potentially a paying member of Defendants’
15 YouTube channels only came to my attention through Defendants’ broadcasting of the video
16 about this lawsuit on December 29, 2020 with the members’ only chat turned on.

17 17. At this point in my investigation, I was able to determine that there had been a
18 concerted effort to hide, and therefore make it difficult to find, evidence of a known connection
19 between Defendants and the person known to me as Lori Ann Barnhart. Specifically, I
20 discovered that the aforementioned Lori Ann comment that was rebroadcasted on the video
21 screen in said June 9, 2020 video, along with all other Lori Ann comments in said video’s live
22 chat, have now been deleted. I thoroughly scanned the entire live chat for said video, and could
23 neither find the subject rebroadcasted Lori Ann comment, nor any other Lori Ann comment,
24 anywhere in said live chat. However, I did find indications that multiple comments from Lori
25 Ann’s YouTube account did previously exist in said live chat. By way of example, and not
26 limitation: I personally observed that other participants of said live chat during said June 9, 2020

livestream video were directly conversing with a person using Lori Ann's YouTube account in said live chat, but all of the statements and/or responses from the side of Lori Ann's YouTube account in said live chat conversations were deleted and are now missing. Below are true and correct copies of screenshots I had obtained from a current replay of said live chat demonstrating this irregularity, and in which I have highlighted in the screenshots to draw the Court's attention to the relevant sections.



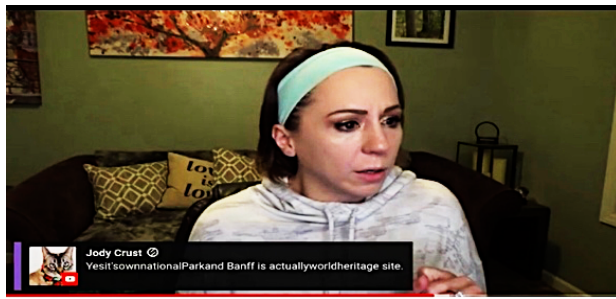
18. Thereafter, I discovered that all of the previously-identified Lori Ann live chat comments from Defendants' aforementioned livestream video on December 29, 2020 were also deleted.

19. In addition to the deletion of all of said Lori Ann comments as stated above, I discovered that the aforementioned Lori Ann YouTube account had been permanently deleted sometime after Defendants' broadcast of said December 29, 2020 livestream. Furthermore, I also discovered that said Lori Ann Facebook account and said Lori Ann Twitter account (@bloodtall) were also deleted within close proximity of the time that said Lori Ann YouTube account was deleted.

20. The deletion of the social media accounts that I know to belong to Lori Ann occurred after her connection to Defendants was disclosed in Plaintiffs' Opposition, including, but not limited to the existence of direct messages between Lori Ann and Defendants. [See Declaration of Kim Fulmer, Dkt. 29, at paragraph 14.] It is my belief that the deletion of Lori Ann's social media accounts was in response to the presentation of evidence of a close relationship between Defendants and Lori Ann Barnhart. [See *id.*]

21. Further, on January 2, 2021, I observed yet another livestream on Defendants' Katie Joy Live YouTube channel in which additional relevant information regarding even more known paid Washington members was disclosed. I had downloaded from YouTube a true and correct copy of said video without the live chat or comments from Defendants' YouTube channel and placed into a Dropbox for the Court's convenience, and can be viewed at:

<https://www.dropbox.com/s/ye5met64a08wcn5/2021.01.03%20PREGAME%20STREAM%20%28KJ%20Live%29.mp4?dl=0>. At around 35 minutes into said January 2, 2021 livestream, a person using the name "Addi – Talking Trials & Stuff," which is the YouTube handle of a paying member that is identified as having a contract with Defendants to receive exclusive content and services from Defendants, states in the Member Only live chat that **she lives in Washington State**, and then later apologizes for mentioning her state. A true and correct copy of said screenshots that I had obtained from this livestream of Addi's statements, which also display Addi's paid member loyalty badge, are below:



Live chat
Top chat 390

Member

4:04 PM **Addi - Talking Trials & Stuff** We live on the side of a hill in WA State. We've learned to deal with the yellow pollen all over everything from the pine 🌲

4:04 PM **Laticia Nadine** yeah in Jasper

4:04 PM **Jody Crust** Jasper park is northern Alberta Lake Louise is in southern Alberta

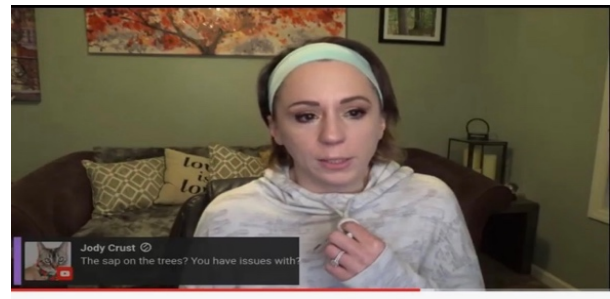
4:04 PM **Zena 612** @Kevin that's hilarious!

4:04 PM **Kiki Kazoo** we have yellow pollen here in upstate NY

4:04 PM **Kevin Louviere** my ex lives in upstate NY. God I miss him so much

4:04 PM **doc** I live in Texas so the closest I can get is a man-made lake us

4:04 PM **Kiki Kazoo** I've been to AB never seen or



Live chat
Top chat 390

Member

4:09 PM **Addi - Talking Trials & Stuff** Sorry my fault, I mentioned my state

4:09 PM **Bri Bach** ain't nothing wrong with dat kiki

4:10 PM **Strega Medievale** Made a ricotta, spinach and meat sauce lasagna. It was so good . Late lunch

4:10 PM **Kiki Kazoo** yes @Addi - Talking Trials & Stuff runs the chat for live trials „love my Addi

4:10 PM **Zena 612** I love my husband's cooking, more than my own 🤪

4:10 PM **Kevin Louviere** I'm gonna make baklava tomorrow

4:10 PM **Jody Crust** Addi - I think it's ok you mention your state. Just not very specific info

4:10 PM **Bri Bach** Strega, I'm coming over

22. At around 38 minutes into said January 2, 2021 livestream, Defendant Paulson tells her members not to share where they live. Defendant Paulson said, “Please don’t ask people where they live. Don’t talk about where you live... in general... If you live somewhere, that’s fine...” Then, at around 40 minutes into the livestream, Defendant Paulson stated that the live chat was being monitored. It is apparent that this statement from Defendant Paulson was a response to Addi, who had since apologized in the live chat for sharing that she was from Washington, and thus providing further evidence of the fact that Defendants not only have actual knowledge that they have a contractual relationship with another resident of Washington, but that Defendants have actual knowledge they continue to derive additional income from the state of Washington through recurring monthly membership fees paid from residents within the state of Washington to Defendants through their YouTube channels.

DECLARATION OF MICHAEL J. SALTZ -16
(2:20-CV-01606-BJR)

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1 23. The newly discovered evidence identified herein is additional evidence that
2 Defendants have not been forthright in their Motion to Dismiss with regard to their contacts in,
3 and income derived from, the state of Washington. Not only should Defendants have known at
4 the time Defendant Paulson signed her Declaration that they had contractual relationships with
5 Washington residents from which they derived an income, but also Defendants most certainly
6 know now that they have contractual relationships with Washington residents from which they
7 most certainly are deriving an income.

8 24. All of the evidence set forth above conflicts with Defendant Paulson's statements
9 in her Declaration [Dkt. 19] at paragraph 4 that: "To my knowledge, neither I nor WOACB has
10 any sponsors or subscribers in Washington. To my knowledge, neither I nor WOACB derives
11 any income from the state of Washington."

12
13 I declare under penalty of perjury under the laws of the United States of America that the
14 foregoing is true and correct.

15
16 SIGNED on January 4, 2021

17
18
19 /s/ Michael J. Saltz

20 Michael J. Saltz
21
22
23
24
25
26